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Applied for Mark	TOP-TOP'S
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Submission	Appeal Brief
Attachments	T-10740.RF Brief Registrations.pdf (19 pages)(652447 bytes) T-10740.RF Appeal Brief.pdf (5 pages)(297173 bytes)
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Int. Cls.: 4, 16, 29, 30, 31 and 32

Prior U.S. Cls.: 1, 2, 15, 37, 45 and 46

Reg. No. 1,549,760

United States Patent and Trademark Office

Registered Aug. 1, 1989

**TRADEMARK
PRINCIPAL REGISTER**

BIG TOP

WEIS MARKETS, INC. (PENNSYLVANIA CORPORATION)
1000 SOUTH SECOND STREET
SUNBURY, PA 17801

FOR: MOTOR OIL, IN CLASS 4 (U.S. CL. 15).
FIRST USE 0-0-1983; IN COMMERCE 0-0-1983.

FOR: PAPER TOWELS AND NAPKINS; TRASH AND KITCHEN BAGS, IN CLASS 16 (U.S. CLS. 2 AND 37).

FIRST USE 0-0-1965; IN COMMERCE 0-0-1965.

FOR: POTATO CHIPS, ONION RINGS, FRENCH FRIES, CHICKEN NUGGETS, GRATED CHEESE TOPPING, CHEESE, FRUIT PRESERVES, DRY ROASTED PEANUTS, PEANUT BUTTER, OLIVES, PICKLES, CANNED MUSHROOMS, SYNTHETIC DAIRY CREAMER, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1965; IN COMMERCE 0-0-1965.

FOR: POPPED POPCORN, PRETZELS, PIZZA, VINEGAR, RICE, SPAGHETTI SAUCE, SPAGHETTI AND MACARONI, NOODLES, SUGAR SUBSTITUTES, TEA BAGS, CRACKERS, BREAD CRUMBS, CORN CHIPS, CHEESE CURLS AND PANCAKE SYRUP, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1960; IN COMMERCE 0-0-1960.

FOR: CAT LITTER, DOG BISCUITS AND DOG FOOD, IN CLASS 31 (U.S. CLS. 1 AND 46).

FIRST USE 0-0-1981; IN COMMERCE 0-0-1981.

FOR: FRUIT PUNCH, LEMONADE, ORANGE JUICE, IN CLASS 32 (U.S. CLS. 45 AND 46).

FIRST USE 0-0-1982; IN COMMERCE 0-0-1982.

OWNER OF U.S. REG. NOS. 378,140, 682,990, AND 1,426,185.

SER. NO. 720,393, FILED 7-5-1988.

GARY L. SHAFFER, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,110,290

Registered June 27, 2006

**TRADEMARK
PRINCIPAL REGISTER**

BIG TOP

WMK HOLDINGS (DELAWARE CORPORATION)
SUITE 1249
300 DELAWARE AVENUE
WILMINGTON, DE 19801

FOR: CHEESE FLAVORED SNACKS, NAMELY,
CHEESE BALLS, COOKIES, SUGAR WAFERS, AND
CHOCOLATE, NAMELY, SEMI-SWEET CHIPS;
FROZEN ENTREES, NAMELY, FROZEN POT PIES,
IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-27-2004; IN COMMERCE 7-27-2004.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 378,140 AND 1,549,760.

SN 78-457,126, FILED 7-27-2004.

AMY HELLA, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,133,974

Registered Aug. 22, 2006

**TRADEMARK
PRINCIPAL REGISTER**



WMK HOLDINGS, INC. (DELAWARE COR-
PORATION)
SUITE 1249
300 DELAWARE AVENUE
WILMINGTON, DE 19801

FIRST USE 7-27-2004; IN COMMERCE 7-27-2004.

OWNER OF U.S. REG. NOS. 378,140 AND 1,549,760.

FOR: CHEESE FLAVORED SNACKS, NAMELY,
CHEESE BALLS, COOKIES, SUGAR WAFERS, AND
CHOCOLATE, NAMELY, SEMI-SWEET CHIPS;
FROZEN ENTREES, NAMELY, FROZEN POT PIES,
IN CLASS 30 (U.S. CL. 46).

SN 78-457,129, FILED 7-27-2004.

AMY HELLA, EXAMINING ATTORNEY

Int. Cls.: 3, 5, 9, 10, 11, 29, 30, 31, 32 and 33

Prior U.S. Cls.: 1, 4, 6, 13, 18, 21, 23, 26, 31, 34, 36, 38,
39, 44, 45, 46, 47, 48, 49, 50, 51 and 52

Reg. No. 3,329,619

United States Patent and Trademark Office

Registered Nov. 6, 2007

TRADEMARK
PRINCIPAL REGISTER



AEON CO. LTD. (JAPAN CORPORATION)
5-1, NAKASE 1-CHOME
MIHAMA-KU.; CHIBA-SHI; CHIBA 261-8515
JAPAN

FOR: ANTISTATIC PREPARATIONS FOR HOUSEHOLD PURPOSES, NAMELY, ANTI-STATIC SPRAY FOR CLOTHING; DEGREASING PREPARATIONS FOR USE ON HOUSEHOLD KITCHEN SURFACES; RUST REMOVING PREPARATIONS; STAIN REMOVERS; FABRIC SOFTENERS FOR LAUNDRY USE; LAUNDRY BLEACH; ADHESIVES FOR AFFIXING FALSE HAIR; ADHESIVES FOR AFFIXING FALSE EYELASHES; LAUNDRY STARCH; PAINT STRIPPING PREPARATIONS; SHOE POLISH; POLISHING PREPARATIONS; SOAPS OF ALL KIND; DENTIFRICES; COSMETICS; PERFUMERY; ABRASIVE PAPER; ABRASIVE CLOTH; ABRASIVE SAND AND SHEETS; PUMICE STONES FOR PERSONAL USE; POLISHING PAPER; ABRASIVE AND GLASS POLISHING CLOTH; FALSE NAILS; FALSE EYELASHES; ALL PURPOSE COTTON SWABS FOR PERSONAL USE, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FOR: PHARMACEUTICAL PREPARATIONS, NAMELY, APPETITE SUPPRESSANTS, ANTI-ALLERGIC PREPARATIONS, ANTITUSSIVE-COLD PREPARATIONS, AND WOUND PREPARATIONS; OIL PAPER BANDAGES FOR SKIN WOUNDS; HYGIENIC DISINFECTANTS FOR USE WITH FACIAL MASKS; MEDICINAL WAFERS FOR TREATING HALITOSIS; GAUZE; CAPSULES, NAMELY, ALLERGY AND DIET CAPSULES; EYE PATCHES AND EAR PATCHES FOR MEDICAL PURPOSES; MENSTRUATION BANDAGES; MENSTRUATION TAMPONS; MENSTRUATION PADS; MENSTRUATION KNICKERS; ABSORBENT COTTON FOR MEDICAL PURPOSES; STICKING PLASTERS FOR MEDICAL USE; BANDAGES FOR DRESSINGS;

BREAST-NURSING PADS; DENTAL MATERIALS NAMELY, DENTAL AMALGAMS, DENTAL CEMENTS; MAGNETIC BRACELETS FOR MEDICAL PURPOSES; INCONTINENCE PADS AND DIAPERS; FLY CATCHING PAPER; MOTHPROOFING PAPER; DIETETIC MILK SUGAR FOR MEDICAL USE; POWDERED MILK SUBSTITUTE FOR BABIES, NAMELY, LACTEAL FLOUR; SEMEN FOR ARTIFICIAL INSEMINATION, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FOR: LABORATORY APPARATUS AND INSTRUMENTS, NAMELY, PIPETTE RACKS, THERMOMETERS, BEAKERS, TEST TUBES; MEASURING MACHINES AND INSTRUMENTS NAMELY, BEVELS, RAIN GAUGES; MACHINES AND IMPLEMENTS FOR CONTROLLING OR DISTRIBUTING ELECTRICITY, NAMELY, ELECTRICAL CONTROLLING DEVICES, DISTRIBUTION TRANSFORMERS; BATTERIES; MEASURING IMPLEMENTS FOR MEASURING ELECTRICAL CURRENT OR MAGNETIC FIELD LEVELS; ELECTRIC WIRES AND CABLES; PHOTOGRAPHIC APPARATUS AND INSTRUMENTS, NAMELY, FLASH-BULBS, CAMERAS, DIGITAL CAMERAS; CINEMATOGRAPHIC APPARATUS AND INSTRUMENTS; OPTICAL APPARATUS AND INSTRUMENTS, NAMELY, OPTICAL FIBER CABLES; EYEGLASSES; READING, OPERA GLASSES; LIFE SAVING APPARATUS AND EQUIPMENT, NAMELY, RAFTS, LIFE PRESERVERS; ELECTRIC COMMUNICATION MACHINES AND IMPLEMENTS, NAMELY, OPTICAL TRANSMITTERS; PHONOGRAPH RECORDS FEATURING MUSIC; ELECTRONIC CIRCUIT CARDS OR CD-ROMS FEATURING TRAVEL INFORMATION VIDEOS AND COMPUTER SOFTWARE FOR AUTOMATICALLY PLAYING THE RECORDED INFORMATION; METRONOMES; ELECTRONIC MACHINES AND IMPLEMENTS INCLUDING PARTS, NAME-

LY, BURGLAR ALARMS; OZONISERS; ELECTROLYSERS; VIDEO GAME PROGRAMS FOR BUSINESS USE; VIDEO GAME PROGRAMS FOR FAMILY USE; ELECTRONIC INTEGRATED CIRCUITS, PORTABLE VIDEO GAME DISCS AND SOFTWARE; SLOT MACHINES; FLIGHT AND VEHICLE DRIVING TRAINING SIMULATORS; SIMULATORS FOR TRAINING DRIVING SKILL; ELECTRIC FLAT IRONS; ELECTRIC HAIR CURLERS; ELECTRIC BUZZERS; VEHICLE BREAK-DOWN WARNING TRIANGLES; LUMINOUS OR MECHANICAL ROAD SIGNS; SIGNALS FOR RAILWAYS; FIRE ALARMS; ALARMS FOR GAS LEAKS; ANTI-THEFT WARNING APPARATUS EXCLUDING THOSE FOR AUTOMOBILES; GLOVES FOR PROTECTION AGAINST ACCIDENTS; FIRE EXTINGUISHERS; FIRE HYDRANTS; FIRE HOSE NOZZLES; SPRINKLER SYSTEMS FOR FIRE PROTECTION; PROTECTIVE HELMETS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FOR: TEETHING RINGS; ICE PILLOWS FOR MEDICAL PURPOSES; COMPRESSION BANDAGES; SURGICAL CATGUT; HYPODERMIC SYRINGES; TEATS; ICE BAGS FOR MEDICAL PURPOSES; MEDICAL ICE BAG HANGERS; NURSING APPLIANCES, NAMELY, BOTTLES; FINGER SPLINTS; CONTRACEPTIVES; ARTIFICIAL TYMPANIC MEMBRANES; ESTHETIC MASSAGE APPARATUS FOR BUSINESS USE, NAMELY, MASSAGE CHAIRS; MEDICAL APPARATUS AND INSTRUMENTS, NAMELY, ELECTRIC HEATING DEVICES FOR CURATIVE TREATMENTS; MASSAGE APPARATUS; GLOVES FOR MEDICAL PURPOSES; URINALS; BED PANS; EAR CLEANING PICKS; TEETHING RINGS FOR DOGS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FOR: WATER CLOSETS; BATHROOM ACCESSORIES, NAMELY, BIDETS, SINKS, SINK PEDASTALS; DESICCATING APPARATUS FOR PRODUCING DRIED FRUIT; STEAMING AND BOILING APPARATUS, NAMELY, FURNACE BOILERS, ELECTRIC FOOD STEAMERS; EVAPORATORS; DISTILLERS; HEAT EXCHANGERS; MILK STERILIZERS; FURNACES FOR INDUSTRIAL USE; NUCLEAR REACTORS; ELECTRIC FOOD DEHYDRATORS; FURNACE BOILERS; HEATING AND COOLING APPARATUS, NAMELY, COOLING DOMES, ELECTRICAL HEATING TAPES; FREEZING APPARATUS AND INSTRUMENTS, NAMELY, FREEZING SHOWCASES, ICE CREAM FREEZERS; LAUNDRY DRYERS FOR BUSINESS USE; APPARATUS AND INSTRUMENTS FOR BEAUTY SALONS AND BARBERSHOPS, NAMELY, HAND-HELD ELECTRIC HAIR DRYERS, CURLING IRONS, SHAMPOO BASINS; COOKING APPARATUS AND INSTRUMENTS USING HEAT, FOR BUSINESS USE, NAMELY, RANGES, MICROWAVE OVENS, TOASTER OVENS; DISH DRIERS FOR BUSINESS USE; DISH STERILIZERS FOR BUSINESS USE; HYDRANTS; PLUMBING FITTINGS, NAMELY, LEVEL CONTROLLING VALVES IN TANKS; PLUMBING FITTINGS, NAMELY, PIPE LINE COCKS; FILTHY WATER PURIFYING TANKS; SEWAGE PURIFYING TANKS; GARBAGE INCINERATORS; SOLAR WATER HEATERS; WATER PURIFYING APPARA-

TUS; ELECTRIC LAMPS AND LIGHTING FIXTURES; ELECTRIC HEATING APPARATUS AND INSTRUMENTS FOR DOMESTIC USE, NAMELY, ELECTRIC HEATING FANS, SPACE HEATERS; TOILET STOOL UNITS WITH A WASHING WATER SQUIRTER; WATER HEATERS USING GAS; NON-ELECTRIC COOKING HEATERS FOR HOUSEHOLD PURPOSES, NAMELY, OIL COOKING STOVES, GAS STOVES; COOK TOPS; SINKS ICE BOXES, NAMELY, ICE CHESTS, REFRIGERATORS; WATER PURIFIERS FOR DOMESTIC USE; BATH PLUMBING FITTINGS, NAMELY, TUB CONTROL VALVES, DRAINS, SPOUTS, COCKS, TRAPS, COUPLERS; OIL AND ELECTRIC LANTERNS; GAS LAMPS; OIL LAMPS; CHIMNEYS FOR OIL LAMPS; WARMING PANS FOR BEDS; ELECTRIC POCKET HAND WARMERS; HOT WATER BOTTLES; TOILET SEATS COMPRISING A SELF-CLEANING DEVICE; DISINFECTANT DISPENSERS FOR TOILETS; TOILET BOWLS; TOILET SEATS FOR JAPANESE STYLE TOILETS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FOR: FISH AND SHELLFISH; FOODS PREPARED FROM FISH, NAMELY, FISH SAUSAGES, FISH CAKES; PROCESSED BEANS; PROCESSED VEGETABLES; PROCESSED FRUITS; FROZEN VEGETABLES; FROZEN FRUITS; EGGS; PROCESSED EGGS, NAMELY, FROZEN EGGS, EGG SUBSTITUTE; MILK PRODUCTS EXCLUDING ICE CREAM, ICE MILK AND FROZEN YOGURT; EDIBLE OILS AND FATS; PREPARATIONS FOR MAKING SOUP; PREPARATIONS FOR MAKING CURRY OR STEW, NAMELY, PRE-COOKED STEW, FINISHED CURRY DISHES THAT CONTAIN MEATS AND/OR VEGETABLES; DEEP FRIED TOFU PIECES; VEGETABLE PASTE, NAMELY, PASTE MADE FROM THE ARUM ROOT; SOY MILK; TOFU, FERMENTED SOYBEANS; PROTEIN BEING FOODSTUFFS FOR HUMAN CONSUMPTION; SOUPS OF JAPANESE NOODLES, IN CLASS 29 (U.S. CL. 46).

FOR: COFFEE; COCOA; COFFEE BEANS, TEA; MISO BEAN PASTE; WORCESTER SAUCE; GRAVY; KETCHUP; SOYA SAUCE; VINEGAR; DRESSINGS FOR SALAD; WHITE SAUCE OF FLOUR AND BUTTER; MAYONNAISE; BARBECUE SAUCE; CUBE SUGAR; ROCK SUGAR; SUGAR; MALT EXTRACTS FOR FOOD; HONEY; POWDER CANDY; STARCH SYRUP; SESAME WITH SALT; COOKING SALT; MASHED SESAME; CELERY SALT; CHEMICAL SEASONINGS; SPICES; AROMATIC SEASONINGS; RICE; PROCESSED OATS, NAMELY, HUSKED OATS; HUSKED BARLEY; FLOUR-MILLING PRODUCTS FOR FOOD, NAMELY, WHEAT FLOUR, CORN FLOUR, BUCKWHEAT FLOUR; GLUTEN FOR FOOD; PROCESSED GRAINS, DUMPLINGS; SANDWICHES; SUSHI; HAMBURGER SANDWICHES; PIZZAS; PICNIC LUNCHES CONSISTING OF SANDWICHES, CHIPS, NAMELY, CORN CHIPS, SOY CHIPS, FLOUR-BASED CHIPS, GRAIN-BASED CHIPS, AND COOKIES; HOTDOG SANDWICHES; MEAT PIES; RAVIOLI; CONFECTIONERY, NAMELY, PASTILLES, CHIPS FOR BAKING, FROZEN CONFECTIONS; BREADS; POWDERS FOR CONFECTIONERY, NAMELY, POWDERED SUGAR; POWDERED FOOD FLAVOR-

INGS FOR EDIBLE ICE; ALMOND PASTE; YEAST POWDER; MALTED RICE; YEAST; BAKING POWDER; FLAVORED ICES; STARCH-BASED BINDING AGENTS FOR ICE CREAM; MEAT TENDERIZERS FOR HOUSEHOLD PURPOSES; STARCH-BASED THICKENERS FOR STIFFENING WHIPPED CREAM; KASU, NAMELY, A RICE BY-PRODUCT OF BREWING SAKE USED AS A FOOD THICKENER, IN CLASS 30 (U.S. CL. 46).

FOR: UNPROCESSED GRAIN, NAMELY, MILLET, SESAME, BUCKWHEAT, MAIZE, BARNYARD MILLET, WHEAT, BARLEY, OATS, COPRA, MALT, AND HOPS; ROUGH CORK; PALM TREE LEAVES; LIVE FISH AND SHELLFISH FOR FOOD; UNPROCESSED SEAWEED; LIVE ANIMALS AND FISH NOT FOR CONSUMPTION; LIVE BIRDS AND REPTILES; SILKWORM EGGS; EGGS FOR HATCHING; ANIMAL FOODSTUFFS; LIVE FISHING BAIT; FRESH FRUIT; FRESH VEGETABLES; SUGARCANE; RAW SUGAR BEET; PLANT AND GRASS SEEDS; LIVE TREES; LIVE GRASSES; LAWN TURF; DRIED FLOWERS; SEEDLINGS; LIVE FLOWERS; LIVING POTTED PLANTS; WREATHS OF LIVE NATURAL FLOWERS; PROTEIN FOODSTUFF FOR ANIMAL CONSUMPTION, IN CLASS 31 (U.S. CLS. 1 AND 46).

FOR: BEER; SOFT DRINKS; FRUIT JUICE; VEGETABLE JUICES; WHEY BEVERAGES; EXTRACTS OF HOPS FOR MAKING BEER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FOR: SAKE; LIQUOR; FRUIT WINE; CHINESE LIQUOR; TONIC LIQUOR CONTAINING HERB EXTRACTS, IN CLASS 33 (U.S. CLS. 47 AND 49).

OWNER OF INTERNATIONAL REGISTRATION 0795352 DATED 6-13-2002, EXPIRES 6-13-2012.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "QUALITY" , APART FROM THE MARK AS SHOWN.

THE NON-LATIN CHARACTER IN THE MARK TRANSLITERATE TO "GURIINAI," WHICH HAS NO MEANING IN ENGLISH.

SER. NO. 79-022,831, FILED 10-31-2005.

JOANNA DUKOVIC, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,664,280

United States Patent and Trademark Office Registered Nov. 12, 1991

**TRADEMARK
PRINCIPAL REGISTER**

TOP CORN

DOUG JOHNSON, INC. (NEVADA CORPORATION)
POST OFFICE BOX 3298
JACKSON HOLE, WY 83001

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CORN", APART FROM THE
MARK AS SHOWN.

FOR: POPCORN BASED CANDY, IN CLASS
30 (U.S. CL. 46).

SER. NO. 74-105,374, FILED 10-12-1990.

FIRST USE 8-24-1990; IN COMMERCE
8-24-1990.

TIMOTHY D. PECSENYE, EXAMINING AT-
TORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,830,476

Registered Apr. 12, 1994

**TRADEMARK
PRINCIPAL REGISTER**

POP TOPS

**KROGER CO., THE (OHIO CORPORATION)
1014 VINE STREET
CINCINNATI, OH 452021100**

**FIRST USE 3-23-1990; IN COMMERCE
3-23-1990.**

**FOR: FROZEN CONFECTIONS, IN CLASS 30
(U.S. CL. 46).**

SER. NO. 74-386,034, FILED 5-4-1993.

CAROLYN GRAY, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,058,873

United States Patent and Trademark Office

Registered May 6, 1997

**TRADEMARK
PRINCIPAL REGISTER**

TOP POPS

**DORVAL TRADING COMPANY, LTD. (NEW
YORK CORPORATION)
P.O. BOX 620
NANUET, NY 10954**

**FOR: CANDY, NAMELY, LOLLIPOPS, IN
CLASS 30 (U.S. CL. 46).
FIRST USE 9-17-1993; IN COMMERCE
9-17-1993.**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "POPS", APART FROM THE
MARK AS SHOWN.**

SER. NO. 75-030,028, FILED 12-8-1995.

**WILLIAM P. SHANAHAN, EXAMINING AT-
TORNEY**

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,068,924

United States Patent and Trademark Office

Registered June 10, 1997

**TRADEMARK
PRINCIPAL REGISTER**

TIP TOP

**COPPER KETTLE CANDY, INC. (CALIFORNIA
CORPORATION)
561 W. SLOVER
RIALTO, CA 92377**

**FIRST USE 11-21-1988; IN COMMERCE
11-21-1988.**

SER. NO. 75-049,387, FILED 1-29-1996.

**FOR: CANDY CONFECTIONS, IN CLASS 30
(U.S. CL. 46).**

N LEETZOW, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,806,701

Registered Jan. 20, 2004

**TRADEMARK
PRINCIPAL REGISTER**

TOPPS

THE TOPPS COMPANY, INC. (DELAWARE COR-
PORATION)
ONE WHITEHALL STREET
NEW YORK, NY 100042109

OWNER OF U.S. REG. NOS. 506,803 AND 829,203.

FOR: CHEWING GUM AND CANDY, IN CLASS
30 (U.S. CL. 46).

SER. NO. 78-216,048, FILED 2-18-2003.

FIRST USE 0-0-1938; IN COMMERCE 0-0-1938.

TANYA AMOS, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl: 46

United States Patent and Trademark Office

Reg. No. 2,501,030

Registered Oct. 23, 2001

**TRADEMARK
PRINCIPAL REGISTER**

TOP POP

INTERNATIONAL CUP CORPORATION (DELA-
WARE CORPORATION)
577 INTERNATIONAL DRIVE
BENNETTSVILLE, SC 29512

FIRST USE 9-18-2000; IN COMMERCE 9-18-2000.

SN 75-980,473, FILED 2-10-1999.

FOR: PROCESSED POPCORN, IN CLASS 30 (U.S.
CL. 46).

MARK T. MULLEN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,993,286

Registered Sep. 6, 2005

**TRADEMARK
PRINCIPAL REGISTER**

MUFFIN TOPS

MALT-O-MEAL COMPANY (MINNESOTA CORPORATION)
2700 IDS CENTER, 80 S. 8TH STREET
MINNEAPOLIS, MN 55402

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: BREAKFAST CEREAL, IN CLASS 30 (U.S. CL. 46).

SN 78-348,200, FILED 1-6-2004.

FIRST USE 8-31-2004; IN COMMERCE 8-31-2004.

KIMBERLY PERRY, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,056,416

Registered Jan. 31, 2006

**TRADEMARK
PRINCIPAL REGISTER**

**THE TASTE THAT'S
TOPS**

MALT-O-MEAL COMPANY (MINNESOTA CORPORATION)
2700 IDS CENTER, 80 S. 8TH STREET
MINNEAPOLIS, MN 55402

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: BREAKFAST CEREAL, IN CLASS 30 (U.S. CL. 46).

SN 78-388,460, FILED 3-22-2004.

FIRST USE 8-31-2004; IN COMMERCE 8-31-2004.

ZHALEH DELANEY, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,393,164

Registered Mar. 4, 2008

**TRADEMARK
PRINCIPAL REGISTER**

KING TOP

ULKER GIDA SANAYI VE TICARET A.S. (TUR-
KEY CORPORATION)
DAVUTPASA CADDESİ NO. 10
TOPKAPI ISTANBUL, TURKEY 34015

FOR: COOKIES, BISCUITS, CHOCOLATE COV-
ERED NUTS, CHOCOLATE CANDIES, CHOCO-
LATE BARS, WAFERS, AND PRALINES, IN CLASS
30 (U.S. CL. 46).

FIRST USE 10-10-1997; IN COMMERCE 3-7-2000.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 78-797,732, FILED 1-24-2006.

NORA BUCHANAN WILL, EXAMINING ATTOR-
NEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,577,372

Registered Feb. 17, 2009

**TRADEMARK
PRINCIPAL REGISTER**

TOPS IT ALL

HEB GROCERY COMPANY, LP (TEXAS LIMITED PARTNERSHIP)
CORPORATE LAW DEPARTMENT
646 SOUTH MAIN
SAN ANTONIO, TX 78204

FIRST USE 2-0-2008; IN COMMERCE 2-0-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: SNACK MIX CONSISTING PRIMARILY OF PROCESSED NUTS, PROCESSED FRUIT, CHOCOLATE CHIPS, WHITE CHOCOLATE DROPS, CHOCOLATE COOKIE DROPS, AND RAISINS , IN CLASS 29 (U.S. CL. 46).

SN 77-294,234, FILED 10-2-2007.

G. MAYERSCHOFF, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

TOPSTIPS

Reg. No. 3,929,019

Registered Mar. 8, 2011

Int. Cls.: 29 and 30

TRADEMARK

PRINCIPAL REGISTER

TOPS MARKETS, LLC (NEW YORK LIMITED LIABILITY COMPANY)
6363 MAIN STREET
WILLIAMSVILLE, NY 14221

FOR: SHRIMP; COOKING OILS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 11-24-2008; IN COMMERCE 11-24-2008.

FOR: SUGAR, FLOUR, CHOCOLATE CHIPS FOR BAKING, READY TO EAT CEREAL, PROCESSED CEREAL TO BE SERVED HOT, GRAVY, PASTA, SALAD DRESSINGS, RICE, COOKIES, REFRIGERATED TORTILLAS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-31-2010; IN COMMERCE 1-31-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 763,677, 1,465,722, AND OTHERS.

SN 77-624,308, FILED 12-2-2008.

KAELIE KUNG, EXAMINING ATTORNEY



David J. Kypas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

BIG TOP DONUT

Reg. No. 3,995,050

Registered July 12, 2011

Int. Cl.: 21

TRADEMARK

PRINCIPAL REGISTER

GLOBAL CONCEPTS LIMITED, INC. (FLORIDA CORPORATION), DBA GLOBAL TV
CONCEPTS, LTD.,
676 S. MILITARY TRAIL
DEERFIELD BEACH, FL 33442

FOR: SILICONE BAKING MOLDS, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 5-1-2009; IN COMMERCE 5-1-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,724,761.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DONUT", APART FROM THE MARK AS SHOWN.

SN 85-059,878, FILED 6-10-2010.

MARY CRAWFORD, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

TOP POT COFFEE

Reg. No. 3,996,148

Registered July 19, 2011

Int. Cls.: 30 and 43

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

DOUGHNUT CORPORATION OF AMERICA (WASHINGTON CORPORATION)
2124 FIFTH AVENUE
SEATTLE, WA 98121

FOR: COFFEE BEANS; ROASTED COFFEE BEANS; GROUND COFFEE BEANS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-29-2005; IN COMMERCE 9-29-2005.

FOR: CARRY OUT RESTAURANT SERVICES FEATURING FOOD AND BEVERAGES; RESTAURANT AND COFFEE BAR SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 9-29-2005; IN COMMERCE 9-29-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,751,146, 2,834,594, AND 2,895,455.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COFFEE", APART FROM THE MARK AS SHOWN.

SER. NO. 85-038,976, FILED 5-14-2010.

MARY BOAGNI, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

APPEAL BRIEF

In response to the final Official Action bearing an electronic mail date of April 14, 2011, and subsequent to the timely filed Notice of Appeal filed October 13, 2011, Applicant respectfully requests reconsideration of the refusal to approve registration of the composite mark, “**TOP-TOP’S**” as applied to:

Corn chips in International Class 30,

in view of U.S. Registration No. 1,433,101, **TOPS**, registered for canned tuna fish; luncheon meats, namely, bacon, bologna, salami, ham, wieners, sausage and luncheon meat loaves comprising olives, pickles and spices combined with luncheon meats; non-dairy whipped topping, and potato chips in Class 29; U.S. Registration No. 2,856,078, **TOPS**, registered for Bread, bagels, frozen waffles, donuts, pastries, ice cream, frozen confections, rolls, crackers, cakes, cake mixes, marshmallows, honey, breadcrumbs, seasoned coatings for meat, fish and poultry, stuffing mixes containing bread, pudding mixes, chocolate chips for baking, flour, baking powder, sugar, pancake syrup, pancake mixes, spices, coffee, tea, cocoa, ketchup, mustard, pickle relish, barbecue sauce, Worcestershire sauce, tartar sauce, steak sauce, spaghetti sauce, tomato sauce, mayonnaise, vinegar, breakfast cereal, rice, rice cakes, canned prepared foods consisting primarily of pasta, prepared pizza, sandwiches, in Class 30 and Prior cited registration Number 2,635,766, and U.S. Registration No. 3,001,996, **TOPS**, registered for Cheese and cracker combinations, chocolate milk, cream, half and half, butter substitutes, egg substitute, eggnog, eggs, dried fruits, fruit snacks, canned vegetables, frozen vegetables, processed vegetables, frozen berries, processed potatoes, frozen potatoes, dried potatoes, frozen onion rings, jam, fruit preserves, applesauce, cranberry sauce, dried beans, dried soup mixes, luncheon meats, fresh meats, canned meats, and frozen meats in Class 29.

The owner of the three cited Registrations is a grocery store in New York which does business under the name Tops Friendly Markets. They use the mark “**TOPS**” for their generic house brand.

Registration of the mark was refused under Trademark Act Section 2(d) alleging that the mark when used on or in connection with the goods were likely to cause confusion, or to cause mistake or to deceive.

Trademark Law has traditionally spelled a list of foundational factors to be considered in determining the presence or absence of a likelihood of confusion. The eight-factor “Polaroid” test was developed in the Second Circuit Court of Appeals to determine whether there was a likelihood of confusion between marks and the goods associated therewith (Polaroid Corp. v. Polarad Electronics Corp., 287 F.2d 486, 128 U.S.P.Q. 411 (2d Cir. 1988))

1. The degree of resemblance between conflicting designations;
2. The similarity of marketing methods and channels of distribution;
3. The characteristics of the prospective purchasers and the degree of care they exercise;
4. The degree of distinctiveness of the senior user’s mark;

5. Where the goods or services are noncompetitive, the likelihood that prospective buyers would expect the senior user to expand into the field of the junior user;
6. Geographical areas where the products are sold;
7. The intent of the junior user; and
8. Evidence of Actual confusion.

All of these factors must be considered in assessing whether a likelihood of confusion exists in the mind of the purchasing public.

The marks are distinctly different in their overall visual appearance and one must carefully scrutinize the appearance of the marks in light of the dilute nature of the prefix term “**TOP**” or “**TOPS**” in question. The cited registrations, “**TOPS**” is for a laundry list of food items, house brand for Tops Friendly Market in upstate New York and northern Pennsylvania, and is distinctly different in its appearance and connotation from Applicant’s trademark, “**TOP-TOP’S**”, which comprises two distinct words that are combined in a fanciful fashion to roll off one’s tongue as an alliteration.

They are visually and phonetically different marks. The visual appearance of the marks alone eliminates the possibility of confusion in the marketplace.

Applicant’s mark is “two separate terms”, two syllables with a hyphen and an apostrophe “s.” The cited mark is merely one dilute term, one syllable, no hyphen or apostrophe, “**TOPS**”

The three registrations referenced by the Examining Attorney must be viewed in their entirety in comparison with Applicant’s stylized version of the mark, “**TOP-TOP’S**”

Neither of the cited marks has reached any level of distinctiveness to be afforded a broad scope of protection.

Further, the goods sold by the parties are not unique and a wide variety of dilute terms can coexist based on the sophistication of the marketplace and consumers.

The term “**TOP**” or “**TOPS**” is considered dilute by the U.S. Trademark Office as evidenced by the fact that the Office has allowed numerous third party registrations of the term for goods that overlap the goods of the cited Registrations and are in fact, in one instance, owned by a grocery store chain in direct competition with the owner of the cited Registrations.

U.S. Trademark Registration Number 1,549,760 **BIG TOP** registered for paper towels and napkins; trash and kitchen bags in class 16; potato chips, onion rings, french fries, chicken nuggets, grated cheese topping, cheese, fruit preserves, dry roasted peanuts, peanut butter, olives, pickles, canned mushrooms, synthetic dairy creamer in class 29: popped popcorn, pretzels, pizza, vinegar, rice, spaghetti sauce, spaghetti and macaroni, noodles, sugar substitutes, tea bags, crackers, bread

crumbs, corn chips, cheese curls and pancake syrup. first use: 19600000. first use in commerce in class 30; and cat litter, dog biscuits and dog food in class 31.

U.S. Trademark Registration Number 3,110,290 **BIG TOP** registered for cheese flavored snacks, namely, cheese balls, cookies, sugar wafers, and chocolate, namely, semi-sweet chips; frozen entrees, namely, frozen pot pies in Class 30.

U.S. Trademark Registration Number 3,133,974 **BIG TOP & design** registered for cheese flavored snacks, namely, cheese balls, cookies, sugar wafers, and chocolate, namely, semi-sweet chips; frozen entrees, namely, frozen pot pies in Class 30.

U.S. Trademark Registration Number 1,664,280 **TOP CORN** registered for popcorn based candy in Class 30.

U.S. Trademark Registration Number 1,830,476 **POP TOPS** registered for frozen confections in Class 30.

U.S. Trademark Registration Number 2,058,873 **TOP POPS** registered for candy, namely, lollipops in Class 30.

U.S. Trademark Registration Number 2,068,924 **TIP TOP** registered for candy confections in Class 30.

U.S. Trademark Registration Number 2,806,701 **TOPPS** registered for chewing gum and candy in Class 30.

U.S. Trademark Registration Number 2,501,030 **TOP POP** registered for processed popcorn in Class 30.

U.S. Trademark Registration Number 2,993,286 **MUFFIN TOPS** registered for breakfast cereal in Class 30.

U.S. Trademark Registration Number 3,056,416 **THE TASTE THAT'S TOPS** registered for breakfast cereal in Class 30.

U.S. Trademark Registration Number 3,393,164 **KING TOP** registered for cookies, biscuits, chocolate covered nuts, chocolate candies, chocolate bars, wafers and pralines in Class 30.

U.S. Trademark Registration Number 3,577,372 **TOPS IT ALL** registered for snack mix consisting primarily of processed nuts, processed fruit, chocolate chips, white chocolate drops, chocolate cookies drops, and raisins in Class 29.

U.S. Trademark Registration Number 3,929,019 **TOPSTIPS** registered for sugar, flour, chocolate chips for baking, ready to eat cereal, processed cereal to be served hot, gravy, pasta, salad dressings, rice, cookies, refrigerated tortillas in Class 30.

U.S. Trademark Registration Number 3,995,050 **BIG TOP DONUT** registered for silicone baking molds in Class 21.

U.S. Trademark Registration Number 3,996,148 **TOP POT COFFEE** registered for coffee beans; roasted coffee beans; ground coffee beans in Class 30.

U.S. Trademark Registration Number 3,329,619 **TOPVALU QUALITY AND TRUST & design** registered for many goods including Coffee; cocoa; coffee beans, tea; miso bean paste; Worcester sauce; gravy; ketchup; soya sauce; vinegar; dressings for salad; white sauce of flour and butter; mayonnaise; barbecue sauce; cube sugar; rock sugar; sugar; malt extracts for food; honey; powder candy; starch syrup; sesame with salt; cooking salt; mashed sesame; celery salt; chemical seasonings; spices; aromatic seasonings; rice; processed oats, namely, husked oats; husked barley; flour-milling products for food, namely, wheat flour, corn flour, buckwheat flour; gluten for food; processed grains, dumplings; sandwiches; sushi; hamburger sandwiches; pizzas; picnic lunches consisting of sandwiches, chips, namely, corn chips, soy chips, flour-based chips, grain-based chips, and cookies; hotdog sandwiches; meat pies; ravioli; confectionery, namely, pastilles, chips for baking, frozen confections; breads; powders for confectionery, namely, powdered sugar; powdered food flavorings for edible ice; almond paste; yeast powder; malted rice; yeast; baking powder; flavored ices; starch-based binding agents for ice cream; meat tenderizers for household purposes; starch-based thickeners for stiffening whipped cream; kasu, namely, a rice by-product of brewing sake used as a food thickener in class 30.

In view of the above, it is clear that the marks are visually and phonetically different to enable the sophisticated consumer to differentiate the source of the goods.

In addition, the goods themselves are different. None of the cited registrations include corn chips. The registrations cover many food items and a food market would sell thousands of products and therefore the citation of marks that contain both corn chips and other foods would not be determinative that the goods overlap. Applicant's goods (corn chips in class 030) and the goods of the cited marks, one of which includes potato chips in Class 029, does not meet the burden of showing confusion would occur in the marketplace.

A consumer purchasing the goods would not be confused into believing a source connection exists.

Similarly in the decision in *In re Coors Brewing Co.*, 68 USPQ2d 1059 (Fed. Cir. 2003), involving beer and restaurant services, the court reversed a 2(d) refusal to register. The Court pointed out that in *Coors* there were differences between the marks, there was widespread third-party use of the same mark for similar goods/services, and the record lacked evidence of a very clear connection between beer and restaurant services.

In this case, the Federal circuit opined that a restaurant bearing a mark and logically selling goods under a house brand, having such mark, would not cause confusion in the market place with beer bearing a similar name, even though, beer could theoretically be sold in the restaurant.

In *Coors*, the CAFC reiterated the "something more" requirement, even when the marks are identical. That is, something more than a visual similarity must be shown to have a holding that likelihood of confusion may exist as to the source of the goods or services sold in the marketplace.

Here the marks are not identical and merely share one dilute component. The Office has failed to meet this "something more requirement" that is expressly needed to support a refusal.

A consumer purchasing the goods, and examining the marks and the goods, would not be confused into believing a source connection.

The Applicant submits that the above is fully responsive to the Examining Attorney's grounds for refusing registration of the above-captioned mark.